

13], arguing that Plaintiff's complaint fails to state a claim upon which relief can be granted.

On April 16, 2020, Magistrate Judge Lanzillo issued a report and recommendation ("R&R") recommending that Defendant's motion to dismiss be granted, and that Plaintiff's constitutional claims based on the general banning of tobacco in prisons should be dismissed without leave to amend. [ECF No. 33]. However, Judge Lanzillo added that "Plaintiff should be permitted an opportunity to file an amended complaint alleging deliberate indifference to a serious medical need, if factually warranted. Such a claim must be properly exhausted and should typically be directed at the specific individuals who failed to provide necessary medical treatment." The time for filing objections to the R&R expired on May 4, 2020, and no objections have been received from Plaintiff.

Thus, after de novo review of the complaint, Defendants' motion to dismiss, and Plaintiff's opposition thereto, together with the report and recommendation filed in this case, the following order is entered:

AND NOW, this 12th day of May, 2020;

IT IS HEREBY ORDERED that Defendant's motion to dismiss [ECF No. 13] is GRANTED, and Plaintiff's constitutional claims based on the general banning of tobacco in prisons are DISMISSED, with prejudice. Nonetheless, Plaintiff is granted the opportunity to file an amended complaint alleging deliberate indifference to a serious medical need, to the extent that such claim is properly exhausted, factually supported, and directed at the specific individuals who allegedly failed to provide necessary medical treatment. Such amendment shall be filed within thirty (30) days of the date of this Order. If Plaintiff fails to file an amended complaint within such time, this case will be dismissed in its entirety, with prejudice. The report and

recommendation of Magistrate Judge Lanzillo, issued April 16, 2020 [ECF No. 33], is adopted as the opinion of the Court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge